

# Comparative Analysis of Ukrainian and Canadian Legislation Regulating the Land Management

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## ABSTRACT

Land management activities in Ukraine are at the stage of gradual legislative reform, which takes place through deregulation and simplification of land management procedures. The analysis of Canada's practical experience in regulating land management activities allows Ukraine to create a single organization consisting of committees on certain land management issues, which will contribute to the development and effective work in this area.

**Keywords:** Land management activities; Land management documentation; Professional liability insurance; Licensing; Certification

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## 1. INTRODUCTION

Land management documentation is a tool for the realization of land rights and is imagined as an integral part of land management. The development of land management documentation, or land management work, is a complex procedural mechanism of actions of the developer, which requires detailed legal regulation. Canada's experience and practice in reference to land management will provide an opportunity to consider possible ways to improve Ukrainian legislation in the field of land management regulation.

The aim of this article is to comparatively analyze the legal regulation of land management in Canada and Ukraine, control over the activities of land surveyors, their professional responsibility, ethical principles and development of recommendations taking into account the positive experience of a foreign country for Ukraine.

## 2. METHODOLOGY

This scientific study used a special comparative and legal method, which presupposes comparison of legal systems of Canada and Ukraine, to distinguish similarities and differences in the means of legal regulation of land management activities. General logical methods and techniques such as methods of structural analysis and synthesis and analogy are used.

## 3. RESULTS AND DISCUSSION

The main elements of the professional competence of Canadian land surveyors and the effective implementation of land management activities are the strategic vision of the development of this area, unified management and state control. To compare the Ukrainian models with the Canadian models of land management regulation, it is imperative to trace both the common and distinctive features of the two countries' legislations.

### 3.1 Models of Regulating Land Management Organization

First of all, it should be noted that the legislation of Canada provides for two types of land surveyors; firstly, it is a land surveyor who has the right to survey land in the province in accordance with the laws of the province and the Surveyor General. This position is directly created under federal system of Canada within the ambit of the Canada Lands Surveys Act, 1985<sup>1</sup>). The Surveyor General monitors the compliance of the land surveyor with accurate and regular records of all his/her surveys. Additionally, on the instructions of the Minister, he/she performs the functions of storing original plans, journals, field notes and other documents related to surveys.

Canada has established a collegial body known as the Association of Canada Lands Surveyors<sup>2</sup>, purpose of which is to establish and maintain standards of qualification, behavior, knowledge and skills of Canadian surveyors and land surveyors, cooperation with other institutions and organizations, and the regulation of land management activities. The governing body of the Association is the Council, which includes president and vice-president of the Association, former President of the Association, members of the Association, who are elected in accordance with by-laws, the Surveyor General, two persons who are not members of the Association and are appointed by the Minister.

The Council is authorized to adopt by-laws relating to any issues necessary for land management. Committees are created at the Council, namely: the Executive Committee, which performs the functions and powers as delegated by the Council, except for the creation of norms and by-laws; the Commission of Experts supervising all issues related to the admission and eligibility of candidates and their test; the Complaints Review Committee whose powers include hearing the complaints received by the Association against the conduct or actions of any member of the Association, Canadian landowner or permit owner; the Disciplinary Committee that hears and determines allegations of unlawful professional actions or incompetence as reported by the Council, an issue of retaining a member of the Association, or issuing a license.

As the Ukraine is reforming the land relations and affairs by improving the management system and deregulation, it would be relevant to create a similar organization on geodesy and land management.

<sup>1</sup> <https://laws-lois.justice.gc.ca/eng/acts/L-6/>

<sup>2</sup> <https://www.acls-aatc.ca/>

In Ukraine, similar organizations also exist. Such public organizations are Association of Certified Surveyors of Ukraine, All-Ukrainian Union of Certified Engineers & Land Surveyors, Land Union of Ukraine and many others. However, the creation of a single organization having powers to control and manage the land management activities will contribute to the development of these fields and effective land management.

### 3.2 Ways of Solving Problematic Issues

In Ukraine, annually more than 800,000 people carry out operations with their land plots as part of their land management process. At the time of registering land plots, up to 57 documents, up to 79 instruments (regulating land relations) and 8 different databases are created by the State to store information about land plots (Pryadka, Tretiak, & Tretiak, 2021, p.16). An important part of such legal actions is the land management documentation, which is aimed at formalizing design decisions, text and graphic materials along with the land management.

For a long time, there is lack of consolidated unified State samples of certain documents on land management and of a detailed approach to the preparation of technical documents. The lack of legal unified prototype leads to the existing incoherence in the land management activities. For example, it is possible to cite a land management project after the allocation of land plots for that. The Law of Ukraine "On Land Management"<sup>3</sup> prescribes the composition of documents that the land management project after the allocation of land should include in case of proposed changes in land use. But the question how land management design is carried out in such cases remains unanswered. Thus, absence of such unambiguous regulation causes practical problems for approval of land management projects, since there are no uniform requirements for the preparation of documentation. Therefore, there are no existing uniform standards for the approval of such documentation.

In 1999, the State Committee of Ukraine on Land Resources approved the "Model of the project of land allocation to legal entities and individuals for any needs", which was mostly intended for the allocation of land for development. The use of this "Model" as a standard of such documentation is impossible, because the projects of allocation of land depending on the purpose of such allocation differ in their complexity and, therefore, cannot be compared. It points to the problem of lack of legal support for the development of a land management project on the allocation of land plots and the need to develop standards for individual documents and approaches to their registration.

A similar problem arises when conducting land inventory in accordance with the Resolution<sup>4</sup> of the Cabinet of Ministers of Ukraine of June 5, 2019. This resolution has determined that land inventory works would include surveying, topographic-geodetic and design-survey work, and preparation and execution of technical documentation. The State Land Cadastre Center<sup>5</sup> provides an example of technical documentation on land management for the inventory of general-purpose land and agricultural land. This is mostly a recommended for such documentation works. The model work is the only sample to create technical documentation on land management for the inventory of land plots. But it cannot be recommended to lands to be used for another purposes.

Creation of a special body that would regulate the work of landowners will allow to unify land management activities. A committee will also be set up for the development of standards to prepare land management documentation. The publication of by-laws and regulations by such a body will detail the requirements of the legislation regarding land management work.

### 3.3 Licensing and Certification of Land Management Activities

One of the common features of the legislation of Ukraine and Canada is that land management work is licensed. In Canada, this license is issued to the member of the Association of Canada Land Surveyors who has experience and practical training in geodesy for at least 2 years during the past 5 years, and he/she adheres to licensing requirements provided for by regulations and by-laws (Canada Lands Surveyors Act, 1985).

In Ukraine, a person is authorized to carry out land management activities who has higher education and qualifications in the field of land management. Certified land surveyor engineers are the

<sup>3</sup> Law of Ukraine "On Land Management" №36, 2003 <https://zakon.rada.gov.ua/laws/show/858-15#Text>

<sup>4</sup> "On approval of the Procedure for conducting land inventory and recognizing those that have lost their validity", Resolutions of the Cabinet of Ministers of Ukraine". <https://zakon.rada.gov.ua/laws/show/476-2019-%D0%BF#Text>

<sup>5</sup> <http://dzk.gov.ua/en/home/>

persons who have higher education in such speciality and qualifications in the land management. These surveyors should have relevant work experience for at least 1 year, have passed the qualification exam, have received a certificate, and have registered in the State Register of Certified Land Surveyors (Law of Ukraine “On Land Management”<sup>6</sup>).

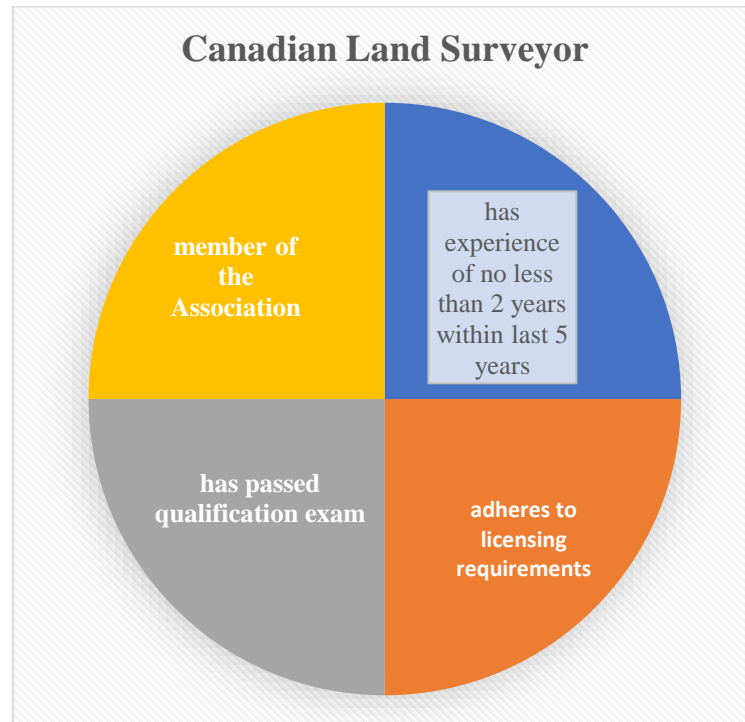


Figure 1: Canadian Land Surveyor



Figure 2: Ukrainian Land Surveyor

<sup>6</sup> <https://zakon.rada.gov.ua/laws/show/858-15#Text>

The licensing and certification of land management activities are done because such an activity requires special knowledge and sufficient technical skills and technological support of equipment. This also follows the principle of distribution of responsibility, according to which the developers of land management documentation dispose of the job. This technical work also requires legal literacy and quality and safety of the tasks in the documentation process, for which the customer is not responsible.

### 3.4 Land Surveyors' Professional Liability

The legislation of Canada stipulates a compulsory professional liability assurance by each member of the Association. On 27 May 2021, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the Management System and Deregulation in the Field of Land Relations" (Law No. 2194)<sup>7</sup> came into force, which is to regulate the issues of land management in Ukraine. It has the provisions to solve the problem of liability of land management executors to the customers and third parties if they commit errors in the preparation of land management documentation or in the implementation of land management work. There was a need for such regulatory fixation having provisions of compulsory insurance for such liability. From now on, in case of a damage to the customer or a third party due to negligence, oversight or professional errors made by technician in performing the topographic, geodetic and cartographic works, compensation should be paid to the customer or third party in the form of insurance indemnity, the amount of which is to be ascertained with the consent of the parties but cannot be less than 1,000 minimum wages.

However, the definition of an insured event as circumstances relating to land management works of national purpose does not correspond to the interests of persons who have applied to the developers in order to create land management documentation regarding the land plot that is in their ownership or use. In practice, errors in land management documentation often cause negative legal consequences.

### 3.5 Ethics of Land Management Activity

The laws of Canada regulate ethical issues of land management activities. Subject to the approval of the Minister, the Council of the Association of Canada Lands Surveyors<sup>8</sup> adopts an ethical code of professional conduct of the land surveyors, and any other person bearing the title "Canadian Land Surveyor", or a contender for such a title. In case, anyone is found guilty of the offense is fined with a severe penalty of not exceeding \$10,000, or imprisonment for a term not exceeding 6 months, or to both types of punishment at the same time.

In Ukraine, there is no such regulation for monitoring ethical behavior of persons engaged in land management activities. The requirements for the ethical conduct of the land surveyors' activities are basically the requirements of professionalism from the administrative services. No doubt, development and approval of ethical standards of land management will be the key to the translational development and effective implementation of land management in the future.

## 4. CONCLUSIONS

Considering lot of common things in legal regulation of land management, the Canadian system is considered to be more developed than Ukrainian. Improving the Ukrainian system of land management will be possible with the creation of a special body authorized not only to license such activities, but also to develop by-laws that will form the legislation. As part of such a body, special committees will exercise control over the assurance of land management activities, compliance with the ethical standards, compliance with the norms of registration of land management documentation and procedures, approval process, and so on.

## REFERENCE

Pryadka V., Tretiak A., & Tretiak, V. (2021). Legislative and management problems of the land management process in the registration of rights to land plots. *Land Survey Bulletin* (in Ukrainian), № 1.C., 15-20.

<sup>7</sup> <https://www.rada.gov.ua/en/news/News/207536.html>

<sup>8</sup> <https://www.acls-aatc.ca/>

## AUTHORS' DECLARATIONS AND ESSENTIAL ETHICAL COMPLIANCES

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